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Los Angeles County Sheriff Civilian Oversight Commission
333 South Grand Avenue
Los Angeles, CA 90071

February 13, 2019

Patti Giggans, Chair
Los Angeles County Sheriff Civilian Oversight Commission
350 South Figueroa Street, Suite 288
Los Angeles, CA 90071

Re: Objections to Recommendations 1, 9 and 10 of the Immigration Ad Hoc Committee

Dear Chair Giggans,

As you know, the Immigration Ad Hoc Committee has presented a report dated November 15, 2018 containing 12 proposed recommendations,¹ which I am understand will be on the agenda for our February 26 meeting. For reasons stated below, I oppose Recommendations 1, 9, and 10 and hope these will be deleted from the recommendations adopted by the full Commission.

While I address my concerns about each of the three recommendations below, the effect of these recommendations, individually and in combination, is to preclude transfer of custody from the Los Angeles County Sheriff's Department to federal immigration authorities of persons convicted of serious and violent crimes who are not lawfully in the United States. The job of the Sheriff, first and foremost, is public safety, and preventing such transfers will negatively impact public safety in Los Angeles County.

Recommendations 1, 9 and 10 are unwise, adversely affect public safety, and go well beyond what is required by state law. These recommendations have the effect of protecting convicted aliens not legally in the U.S. Indeed, the effect of the recommendations is to shield aliens who have been convicted of serious criminal activity from being deported. Adopting these recommendations will make our community *less* safe.

I. Background

Some have argued that SB 54 (also known as the "Values Act") has made California a "sanctuary" state. This overstates the case. To be sure, SB 54 significantly limits the ability of local law enforcement to cooperate with federal immigration authorities. But the three recommendations of the Ad Hoc committee go much further. They go well beyond the carefully crafted compromise of SB 54.

¹ The Ad Hoc Committee's report is titled "[DRAFT] Report of the Sheriff Civilian Oversight Commission's Immigration Ad Hoc Committee Regarding the Los Angeles County Sheriff's Department Cooperation with Immigration and Customs Enforcement (ICE) and [PROPOSED] Recommendations. Date: November 15, 2018" (hereafter, the "Report").

SB 54, as enacted, made a policy judgment that certain enumerated crimes were sufficiently serious that California's sheriffs *are* permitted to transfer persons, who are in the U.S. illegally and convicted of these crimes, to federal immigration authorities. These enumerated crimes include:²

- (1) Sexual abuse and exploitation of children,
- (2) Crimes resulting in death or involving infliction of great bodily injury,
- (3) Crimes requiring a sex offender to register under the California Penal Code,
- (4) Torture and mayhem,
- (5) Hate crimes,
- (6) Rape,
- (7) Kidnapping,
- (8) Burglary and Robbery, and
- (9) Felony Drug Offenses involving the selling, distribution and trafficking in hard drugs, such as heroin, fentanyl and meth.

In other words, these crimes involve serious and/or violent criminal acts by persons who are not lawfully in our country. Moreover, these are all crimes punishable under state law as felonies.

II. Ad Hoc Committee's Report does not analyze the public safety impact of the Recommendations.

The effect of Recommendations 1, 9 and 10 is to prohibit the LASD from transferring an alien not legally in the U.S., but convicted of one of these enumerated crimes, to federal immigration authorities. As a result, aliens unlawfully in the U.S. who have committed serious crimes will be allowed to walk right out of the jail and back into our community.

Although there are clear public safety implications in adopting these recommendations, the Ad Hoc Committee's report contains no analysis of the public safety impact of its proposed recommendations.³ For this reason alone, the three recommendations should be rejected by the full Commission. Absent an evaluation of impact on public safety, we are not in a position to weigh the merits of the recommendations.⁴ To move forward without such an analysis would be irresponsible.

III. There will likely be a significant adverse impact on public safety if the Recommendations are adopted.

² See, e.g., *Practice Advisory, SB 54 and the California Values Act: A Guide for Criminal Defenders* (Feb. 2018) pp. 13-14.

³ Although the executive summary of the Ad Hoc committee's report states that its recommendations are, among other things, "[b]ased on ... our own analysis of the public safety ... issues involved," Report p. 4, no such analysis appears in the report itself.

⁴ By contrast, although not evaluating public safety impact, the Ad Hoc committee does attempt to evaluate the fiscal impact of the LASD's compliance with ICE detainers. See Report, p. 5. The Ad Hoc committee's cost estimate of \$1.4 million is questionable, because much of the costs appears to be attributable to complying with requirements imposed by SB 54 and its predecessor state law, not with transferring custody to ICE.

If released back into the community, many of these individuals will commit further crimes, *i.e.*, recidivate. Indeed, in a comprehensive Bureau of Justice Statistics study published in 2014, which followed 405,000 people released from state prisons, approximately three quarters reoffended within five years.⁵ There is no reason to suppose that recidivism rates for convicted criminals are significantly different, whether they are U.S. citizens or aliens in the U.S. illegally.⁶

According to a 2016 Office of Justice Programs study of recidivism:

“Research has demonstrated that repeat offenders [person convicted who repeat crime after release] account for a disproportionate amount of crime and that convicted offenders are re-arrested at a rate 30 to 45 times higher than the general population. As a result, *there is a widespread recognition that recidivism has a direct impact on public safety.*”⁷ (Emphasis added.)

In addition to being serious and heinous crimes, many of the enumerated crimes in SB 54 are well known to be “recidivistic.” In other words, a significant percentage of people convicted of these crimes, *e.g.*, rape, robbery, and burglary, repeat these offenses, most often in the communities from which they came. According to the 2014 Bureau of Justice Statistics study, 82% of property offenders (*e.g.*, burglary) recidivate within five years. For violent offenders, the recidivism rate is 71%. It is recidivism, for example, that has led California and other states to require registration of sex offenders, acknowledging that these criminals may pose an ongoing threat to the public.

The Sheriff’s job, first and foremost, *is* public safety. He is charged with taking steps to increase public safety, not steps that leave our community more vulnerable to crimes, especially those as serious as the enumerated crimes. It is highly likely that adopting Recommendations 1, 9 and 10 will negatively impact public safety in Los Angeles County. For this reason alone, we should vote against these recommendations.⁸

IV. There are adverse, unintended consequences if the Recommendations are implemented.

Besides additional crimes committed by convicted aliens who should not be in our country in the first place, there is another public safety risk if Recommendations 1, 9 and 10 are adopted. If persons have been convicted, for example, of robbery, rape or an assault involving “great bodily

⁵ U.S. Dept. of Justice, Bureau of Justice Statistics, *Recidivism of State Prisoners* (Apr. 2014), <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

⁶ The limited information available regarding the recidivism rate for aliens residing unlawfully in the U.S. who have been convicted of crimes tends to indicate that it is not significantly different from the rest of the population convicted criminals. See, *e.g.*, Sacchetti, Maria. “Criminal Aliens Reoffend at Higher Rates than ICE has Suggested,” *The Boston Globe* (June 4, 2016).

⁷ Office of Justice Programs, *Chapter 5: Adult Sex Offender Recidivism* (2016), https://www.smart.gov/SOMAPI/sec1/ch5_recidivism.html.

⁸ Even if they did not engage in further crime, the fact remains that these individuals have been convicted of violent or otherwise serious crimes and, as they are here illegally, they have no right to remain in the U.S.

injury,” and are not transferred to federal immigration authorities at or near the IRC (the intake and release area of the L.A. County Jail), we should ask ourselves:

Do we really want armed ICE Agents going out into the community and arresting them?

This is what we will be forcing ICE to do if these recommendations are adopted, and there is every reason to believe that ICE will do so. When armed law enforcement officers go out to the field to make arrests--as all law enforcement officers know well--it potentially endangers other persons at the residence and in the nearby community as well as law enforcement officers.

Is this what our Commission wants to happen?

In addition to the danger this creates, other persons in the vicinity who are unlawfully in the U.S. will also be arrested by ICE for deportation. These “collateral” arrests can be avoided by transferring custody of convicted aliens, who are a primary focus of ICE, in the secure environment of the Los Angeles County jail.

In addition to the potential for recidivism, greater ICE presence in Los Angeles County communities and more arrests of noncriminal aliens are among the likely *unintended* consequences of the unwise policy that underlies Recommendations 1, 9, and 10. The only population that stands to benefit are convicted criminals unlawfully in the U.S.

V. Comments on the Recommendations

A. Recommendation No. 1

The adoption of this recommendation precludes the LASD from giving information to ICE regarding the release date of a person: (1) convicted of one of the crimes enumerated in SB 54, (2) who is illegally in the U.S. and subject to deportation, (3) “unless required by federal or state law.”⁹ There is no federal or state law requiring release dates be made available to ICE, even when ICE has provided the LASD with a detainer. Suffice it to say, if ICE is not given notice of the release date of persons convicted of a SB 54 crime in advance, the effect is likely to prevent transfer of custody by the LASD to ICE, and these convicted aliens will return to the community.

B. Recommendation No. 9

By denying ICE access to Inmate Reception Center (IRC) of the LA County Jail, the effect of this recommendation is to prohibit the Sheriff from transferring custody within the IRC of a person convicted of a SB 54 crime who is illegally in the U.S. According to Recommendation 9, such access must be denied to ICE “unless required by federal or state law.” What the Ad Hoc committee’s report fails to mention is that there is no law, state or federal, that requires ICE be given access to the IRC. If the Sheriff does not give ICE access to the jail, as it does every other federal and out of state law enforcement agency, a safe transfer of custody cannot take place.

⁹ Over the history of our country, this information has been provided routinely as a matter of comity, that is, as part of the cooperation needed between federal and local law enforcement in order for our federal system to function. See Section VI, below.

Even assuming ICE has notice of the release date in advance (*see* Recommendation 1, however), this recommendation will have the effect of requiring a transfer of custody *outside of* the IRC, potentially endangering others, including the convicted individual, family members, bystanders, local law enforcement as well as the ICE officers effecting the arrest.

C. Recommendation No. 10

This recommendation will prohibit the LASD from honoring ICE detainers “unless required by federal or state law.” A “detainer” is well understood by law enforcement and prison officials. An immigration detainer is based on an administrative warrant issued by federal immigration authorities. Indeed, administrative warrants and detainers are the only process available for giving notice of a deportation hold on an illegal alien in state custody. They have been used and honored for decades to ensure that convicted aliens not legally present in the U.S. are removed from the country instead of being released back into the community where they were previously arrested.

The Ad Hoc committee, however, wants to forbid the Sheriff from honoring administrative warrants and detainers and only transfer custody to ICE if ICE presents a criminal, sometimes called a “judicial,” warrant. However, a federal “judicial” warrant can be issued only when there is to be a federal criminal prosecution. Most of ICE’s detainers are for administrative deportation proceedings, which are not criminal cases.

On its face, this recommendation has a patina of reasonableness, but, in context, it requires ICE to secure criminal charges, *e.g.*, for illegally entering the U.S.,¹⁰ filed by the U.S. Department of Justice. As the only action contemplated by ICE is administrative deportation proceedings, we should not require the federal government to institute federal criminal charges in order to satisfy the Ad Hoc Committee’s insistence on a federal criminal warrant. Moreover, as a former United States Attorney, I can state categorically that it is not appropriate to criminally charge an alien in federal court merely to secure his custody for administrative deportation. Indeed, most aliens who are unlawfully present would probably prefer not to be prosecuted and convicted in federal court after serving time on a state charge.

The bottom line is that there is no federal or state law *requiring* the Sheriff to honor an administrative warrant and detainer. Thus, the effect of this recommendation is that a person convicted of a SB 54 crime, not legally in the U.S., will be released back into our community.

VI. The Recommendations undermine our federal system.

Under the United States Constitution, the Congress and the federal government are charged with creating and enforcing the laws relating to illegal immigration. And under the U.S. Constitution, the federal law is supreme, overriding state laws that are in conflict with it.¹¹ While a local or state agency is not required to affirmatively assist federal authorities in enforcing federal law, they are also not free to thwart such efforts. Indeed, basic principles of comity, essential to the

¹⁰ *See, e.g.*, 18 U.S.C. §§ 1325 and 1326.

¹¹ *See* U.S. Const., Art. VI, Cl. 2.

smooth functioning of our federal system, suggest that no local agency should be required to take measures that obstruct or defeat federal law enforcement. The adoption of the three recommendations tend to negate even that minimal level of comity and cooperation essential to our federal union. As a Commission, we should not direct the Sheriff to take steps that fundamentally undermine our federal system.¹²

VII. The adoption of the Recommendations will likely invite increased illegal migration of criminals into the U.S. and Los Angeles County.

The number of aliens illegally residing in the U.S. is unknown, but it is estimated to be between 11 and 20 million people. Under our immigration laws, we currently welcome nearly one million people annually as legal immigrants, including refugees, a number that far exceeds any other country in the world. As a nation that values and has benefitted from immigration, we can and should continue to admit a large numbers of *legal* immigrants. Because we are also a nation of laws, with a belief in the rule of law, it is appropriate to take reasonable steps to discourage further illegal migration--the most obvious and reasonable of which is allowing federal immigration authorities to remove criminals, here illegally, who have committed serious crimes in Los Angeles County.

The effect of adopting these recommendations would be to establish Los Angeles County as a sanctuary for criminal aliens. Such a policy invites criminals who illegally enter the U.S. - - a small percentage of illegal migrants - - to come to places where they will not be turned over to ICE, no matter what crimes they commit. Because these recommendations go beyond California state law by seeking to shield even serious criminals from immigration enforcement, we can reasonably anticipate that adopting them will incentivize criminal aliens to seek shelter in Los Angeles County.

VIII. The Ad Hoc Committee's Recommendations are beyond the scope of its mandate.

The Commission established the Ad Hoc committee for the limited purpose of evaluating the LASD's compliance with the Sheriff's policies described in his letter dated January 10, 2017. Its charter was and is coterminous with a request from the Board of Supervisors, as follows:

“Request the Civilian Oversight Commission, in collaboration with the Inspector General and the Auditor-Controller, review, analyze and make recommendations to the Sheriff's department's adherence to the policies described in his January 10, 2017 letter and any other relevant policies as needed to carry out the intention of this policy and report back in writing to the Board quarterly”

Despite this limited mandate, the Ad Hoc committee's three recommendations go far beyond whether the LASD is adhering to of the policies set forth in the Sheriff's January 10, 2017 letter or the intent of those policies. Indeed, the Ad Hoc committee appears to concede, and the

¹² Indeed, such a direction from us would potentially put the Sheriff in the untenable position of violating that part of his oath of office requiring him to support and defend the U.S. Constitution.

Inspector General has found, that the LASD has substantially complied with the policy set forth in the January 10, 2017 letter.¹³ Thus, the three recommendations have virtually nothing to do with what this Commission requested the Ad Hoc committee to do.

This is, of course, a procedural point, but it is an important one for the governance of our Commission. The sound functioning of our Commission is aided by ad hoc committees, but these committees should stay within their mandate, unless they request expansion of the scope of their mandate and such expansion is approved by the full Commission. This did not occur in this instance. If we failed to adhere to such a procedural rule, any ad hoc committee could on its own expand the scope of its mandate and speak for the Commission as a whole on any subject on which it deems fit.

Conclusion

In the final analysis, Recommendations 1, 9 and 10 protect criminals, are antithetical to public safety, at odds with the public interest, and contrary to the Sheriff's obligation to promote public safety. Accordingly, I would urge my fellow Commissioners to reject them.

Sincerely,



Robert C. Bonner
Commissioner

Cc: Brian Williams, Executive Director

¹³ Report, p. 13.

